

**Arlington House Aluminum Furniture Division of  
Plantation Patterns, Inc. and David Allen  
Miller and Charlene Burnette. Cases 10-CA-  
18672 and 10-CA-18720**

23 July 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS**

On 15 July 1983 Administrative Law Judge J. Pargen Robertson issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Arlington House Aluminum Furniture Division of Plantation Patterns, Inc., Birmingham, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1 (a).

"(a) Promulgating and maintaining an unlawful no-solicitation rule."

2. Substitute the following for paragraph 1(b):

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Substitute the attached notice for that of the administrative law judge.

<sup>1</sup> The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We do not, however, find it necessary to rely on the judge's discussion of Charlene Burnette's failure to explain the reason she changed her mind about supporting the Union.

Absent exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(a)(1) by promulgating and maintaining an unlawful no-solicitation rule. In adopting this finding, however, we do not rely on *T.R.W. Bearings*, 257 NLRB 442 (1981). Member Zimmerman continues to adhere to *T.R.W.* See his dissent in *Our Way, Inc.*, 268 NLRB 394 (1983).

The judge inadvertently used broad cease-and-desist language in his recommended Order. We shall correct this error.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

WE WILL NOT promulgate and maintain an unlawful no-solicitation rule.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

**ARLINGTON HOUSE ALUMINUM FUR-  
NITURE DIVISION OF PLANTATION  
PATTERNS, INC.**

**DECISION**

**STATEMENT OF THE CASE**

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Birmingham, Alabama, on March 29 and 30, 1983. The case involves two complaints. The first complaint issued on December 7, 1982, citing a charge which was filed on October 29, 1982. The second complaint issued on December 27, 1982, citing a charge which was filed on November 16, 1982. The complaints alleged that Respondent engaged in activity in violation of Section 8(a)(1) and (3) of the Act.

On the entire record, and from my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent I make the following

**FINDINGS OF FACT<sup>1</sup>**

The General Counsel alleges that Respondent engaged in 8(a)(1) violations by interrogating its employees about their union activities, creating an impression of surveillance of its employees activities by telling employees that it knew who had started the union campaign, threatening its employees with discharge if they engaged in union activities, and promulgating a no-solicitation rule. Respondent allegedly violated Section 8(a)(3) of the Act by discharging employee David Miller on October 15, 1982, and by demoting employee Charlene Burnette on November 1, 1982.

Respondent denied all the unfair labor practice allegations. While no dispute arose as to the occurrence of union activities, it was Respondent's position that those activities which came to its attention occurred after the October 15, 1982 discharge of David Miller. Moreover, Respondent contends that any union activities by Charlene Burnette occurred after, and possibly because of, Respondent's activities in assigning her to production

<sup>1</sup> Respondent admitted that at material times it is and has been an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The parties stipulated that United Steelworkers of America is a labor organization as defined in Sec. 2(5) of the Act.

duties (i.e., the alleged demotion). Additionally, Respondent contends that Burnette was never demoted during 1982 as alleged by the General Counsel.<sup>2</sup>

The General Counsel presented what appears to be a prima facie case. However, the General Counsel's case is dependent on the credibility of Charlene Burnette. Burnette was the sole witness offered in support of the General Counsel's 8(a)(1) allegations, and in support of the motive elements regarding Miller's discharge and Burnette's alleged demotion. Additionally, Burnette was the only witness called to prove that Respondent knew of its employees' union activities before Miller was discharged on October 15, 1983.

In that regard, although David Miller corroborated Charlene Burnette's testimony that Miller picked up some union authorization cards and split the cards with Burnette to distribute to the employees on October 4 or 5, 1982, Miller testified that no supervisor ever saw him soliciting employees to sign authorization cards.

On the other hand, Burnette's testimony linked Respondent to acknowledge of Miller's union activity early in October 1982.

#### *A. Sequence of Events*

##### *1. October 9, 1982*

During early October 1982,<sup>3</sup> according to Charlene Burnett, Ronnie Worden, who was supervisor over welding and buffing at that time, directed Burnette to come to his desk in the welding department. Only Burnette and Worden were present when Worden asked her if she knew anything about the Union. When Burnette replied that she did not, Worden responded, "Charlene, I know you too well. You know who's doing it." Burnette testified that she told Worden that she did not know what he was talking about. Worden then replied, "Charlene, if you are involved in it, get out, because they are going to fire you if they find out you are involved."

According to Burnette, she had a second conversation with Ronnie Worden on October 9, 1982. On that occasion, according to Burnette, Worden came over to her in the buffing department and said, "Charlene, we think we know who is trying to organize the union." Burnette asked who and Worden replied, "David Miller. We are going to try to catch him soliciting." Worden went on to say, "We are going to try to catch him soliciting on company property during breaks or lunch, and then we are going to terminate him." Burnette testified that Worden also asked her if she had signed the checkoff card. Burnette told Worden that she did not think he should be asking her that.

##### *2. October 15, 1982*

Burnette testified that, on the day of Miller's discharge (October 15, 1982), Ronnie Worden came to her and

said, "Charlene, we know for sure that David Miller is the one that is behind the Union and we're fixing to fire him at the end of the shift."

##### *3. During the week of October 22, 1982*

Burnette testified that, during the week following the discharge of David Miller, company officials Dudley King and Donnie Lowe and all the supervisors met with the employees. Burnette identified King as the owner of Arlington House and Donnie Lowe as the plant manager. According to Burnette, either Lowe or Dudley King spoke to the employees and told them that he had called all the people together to talk to them about the rumors that had been circulating through the plant about the Union. Burnette indicated that he went on to say that they did not need a union, that they were a new company, they were doing good just the way they were, and that they had always had an open door policy for the employees. The speech continued, "as you people might have heard, last week we had to terminate an employee, David Miller, in the buffing department. Rumors were that he was the one that had been soliciting for the union."

On cross-examination Burnette was asked if the reference to David Miller during the speech was to the effect that he was trying to get his job by getting employees to sign cards. Burnette at that point testified that she did not know whether that was the comment made about Miller during the speech and that she did not remember what was said about Miller exactly.

##### *4. Early November 1982*

During early November 1982, Burnette asked Plant Manager Donnie Lowe to meet with her. Burnette testified that she told Lowe that she could not take anymore harassment. Lowe replied, "Okay, since we are in here, let's get everything out in the open." Burnette said she wondered why she had been put on the buffer and taken off her leadperson job. Lowe replied that they needed Burnette to buff and, "Charlene, I have heard rumors going around the plant about you." Burnette asked what the rumors were and Lowe replied, "You are the one that has been soliciting for the union." According to Burnette she replied that she was not going to deny it and that she was not going to admit it. Burnette told Lowe, "Someone who signed the card might have been someone who got scared and told on me."

Burnette testified that later during early November she met with Plantation Patterns' personnel manager Kathie Shirah, in Donnie Lowe's office. According to Burnette, Shirah said that she had heard that she had a lot of problems. Burnette told Shirah that she could not take any more harassment. Burnette asked about her being taken off the leadperson position and pointed out that her seniority did not mean anything. Burnette also mentioned Barry Davis was doing her job as leadperson. Subsequently Shirah called Plantation Patterns and then told Burnette that Davis was classed as a painter and had not been promoted and that she would see that Burnette got her job back.

<sup>2</sup> It is undisputed that Burnette was displaced as leadperson during 1983 while on disability leave. The General Counsel indicated during the hearing that that demotion, the one in 1983, was not alleged as a violation.

<sup>3</sup> Later in her testimony Burnette identified this date as October 9, 1982.

Burnette recalled that, about a week after her meeting with Shirah, she had another conversation with Plant Manager Donnie Lowe. This conversation occurred in the buffing department and only Lowe and Burnette were present. Burnette mentioned to Lowe that Shirah was supposed to let her know the outcome of their meeting. Lowe stated that a decision had been made. Burnette asked if she was going to get her job back and Lowe replied no, that he liked the way things were going, they were working out good. Burnette asked if her pay was going to be cut and Lowe replied, "Not at this time." Burnette asked if this was because of her work and Lowe replied "No, it's not got anything to do with your work." Burnette then replied, "Well, it's got to be either of two things: your brother-in-law or the Union." Lowe replied, "Well, Charlene, you can figure that one out on your own."

#### B. *Credibility Resolutions*

In material respects as to the vital elements of the various unfair labor practice allegations, the testimony of Charlene Burnette was denied by Respondent's witnesses. However, regarding the allegation of a no-solicitation rule, former Supervisor Ronnie Worden<sup>4</sup> testified that he told Charlene Burnette that he "didn't want anybody signing union cards on company time."

Therefore, at the outset, an in-depth examination into the elements regarding the credibility of Burnette is essential.

While a number of factors, including Respondent's announced opposition to the Union in late October, and the timing of the discharge of David Miller, raise grave suspicion as to Respondent's motives, I must consider several points regarding Burnette's testimony.<sup>5</sup>

The first troubling area regarding this case involves the absence of corroborative testimony. That point is most troublesome in the area of pre-October 15, 1982 union activity. Only the two alleged discriminatees Burnette and Miller testified that employees were solicited to sign union cards before Miller's discharge. Of those two only Burnette's testimony linked that activity with knowledge by Respondent.

Other employees called by Respondent denied knowing of any such union activity. Although former Supervisor Worden admitted telling Burnette that employees were not to solicit union cards during worktime, no effort was made to identify through Worden whether that conversation occurred before October 15.

Moreover, it is rather unusual that only alleged discriminatee Burnette was called regarding comments regarding the Union from various supervisors. Only Burnette was the subject of any comments which are alleged as 8(a)(1) violations and, according to her testimony, 8(a)(1) comments were made to her by three or four different

agents<sup>6</sup> of Respondent and one of those comments came during a general speech to employees. Nevertheless, no other employee corroborated Burnette regarding the speech and one other employee was involved in alleged 8(a)(1) activity.

While I do not find this omission to be dispositive, I do find the lack of corroborating testimony to be bothersome.

Secondly, the time frame of Burnette's story regarding her alleged demotion and her union activities does not withstand analysis. Burnette contends that she involved herself in union activity around October 4 or 5 and that subsequently, in early November, she was removed from her leaderperson job to one in production. However, when recalled for rebuttal following Respondent's case, Burnette testified that she performed production work on "show pieces" and in welding in place of employee Pam Peak, during September 1982. On those occasions according to Burnette, Barry Davis assumed her duties as leadperson.

In her testimony during the General Counsel's case in chief, Burnette denied beginning her union activities after "scheduling" was reassigned from her to Barry Davis. However, on rebuttal, Burnette testified that her duties, which included scheduling, were reassigned to Davis during September (i.e., the month before Burnette became involved with the Union).

The September transfers, which occurred before Burnette's October union activity, involved the same elements as the alleged November 8(a)(3) violations. No effort was made to show why the General Counsel and Burnette felt that the September transfers were different from those in November. Although Burnette was never switched back to leadperson following November, she became disabled in December and was not available to resume her leadperson duties after that time.

Additionally, Burnette testified that she was formerly opposed to, and had even sued, the Union. The record did not prove, as Respondent contends, that Burnette was motivated to work for the Union because of, rather than before, her assignment to production duties. However, neither did Burnette explain why she changed from an opponent to the Union to a stronger supporter in October 1982. That timing does lead one to question whether her assignment to production work during September contributed to her subsequent swing to a pronoun position.

Of course, employees are entitled to support or oppose the Union regardless of their reasons. But here, in consideration of the time frame regarding Burnette's claim of discrimination, her failure to explain the reason for her change of mind raises additional credibility questions in view of her contention that she did not support the Union because of her change in assignments.

Thirdly, there were apparent conflicts in Burnette's testimony. Early in her testimony Burnette testified that she was demoted to production work a few days after David Miller was discharged. However, as Respondent

<sup>4</sup> Worden is no longer employed by Respondent.

<sup>5</sup> Since the General Counsel has the burden of proving a prima facie case in support of unfair labor practice allegations, it is essential that the evidence in support of the allegations must be credited. Therefore, while testimony supporting Respondent's defense may also be less than credible, it is not necessary to reach that consideration absent a determination that the General Counsel's allegations are supported by substantial (credited) evidence.

<sup>6</sup> As mentioned herein, Burnette was uncertain as to whether his speech to employees was given by Respondent's owner or plant manager.

brought out through Burnette on cross-examination, her November 2, 1982 affidavit to the Regional Office identified her job as leadperson. No mention was made in that affidavit to the alleged demotion. Later in her testimony, Burnette testified on several occasions that she was permanently demoted to buffing, a production job, in early November.

Early in her testimony Burnette testified to two early November conversations with Plant Manager Lowe regarding her work assignment. Burnette said nothing to the effect that Lowe told her he was assigning her to production work. However, later when Respondent's attorney asked Burnette how she knew when she was demoted, she testified that Ronnie Lowe told her in early November that he was assigning her to production work. Additionally, after direct, Burnette appeared to lend strength to her case by testifying, for the first time during rebuttal, that she was told by Plant Manager Lowe and Supervisor Rodriguez in early November 1982 that she was to go to Barry Davis if she had problems. The obvious significance of such remarks was that Lowe and Rodriguez were treating Davis, rather than Burnette, as leadperson.

Both the above recalled incidents lend strong support to the complaint allegations. It is bothersome why Burnette did not include those matters in her earlier testimony.

Finally, Burnette testified that she did not tell supervisors that any buffing employees were performing poorly. Several supervisors testified that Burnette told them that buffing employees, including David Miller, were performing unsatisfactorily. On cross, when confronted with the mention of several buffing employees who had been discharged for poor work, Burnette changed her testimony and admitted that all the buffing employees did not perform well.

#### C. Findings

The record, and especially the factors mentioned above, demands concern as to the reliability of the General Counsel's evidence.

Standing alone I was impressed with Burnette's testimony. Her recollection appeared good. The timing and substance of the conversations included in her testimony appeared logical. However, the above-mentioned factors of concern<sup>7</sup> do warrant a determination that I cannot credit disputed testimony supporting the unfair labor practice allegations absent credited corroboration. As shown above, Burnette's testimony on the material unfair labor practice elements was disputed by Respondent and was not corroborated by other witnesses or documents. Therefore, as to the 8(a)(1) and (3) allegations not mentioned below, I find that the General Counsel failed to establish that any violations occurred.

In that regard, absent the crediting of Burnette, there is no evidence showing that Respondent knew of David

Miller's union activities prior to his discharge. Therefore, I find that the record does not prove that Respondent knew of Miller's union activities and I find that Respondent did not discharge Miller because of his protected activity.

As to Charlene Burnette, her testimony on rebuttal illustrated that she was frequently assigned to production work and Barry Davis was assigned leadperson duties, before Burnette engaged in any union activities. Moreover, the evidence is undisputed that Burnette was classified as leadperson and paid in accord with that classification throughout 1982. Therefore, I find that the evidence illustrated that Burnette's job and assignments were not materially different during 1982, after her alleged union activities. I find the General Counsel failed to prove that Burnette was treated discriminatorily.

As to most of the 8(a)(1) allegations: In view of my finding that Burnette's testimony cannot be credited absent corroboration, those allegations which were disputed by Respondent must fall for lack of substantial evidence.

#### D. The No-Solicitation Admonition

Former Supervisor Ronnie Worden admitted telling Charlene Burnette and other leadperson employees that he did not want "anybody signing union cards on company time." I credit Worden's admission. Although Worden testified that he did not tell Burnette that employees should not sign union cards during break or lunch, neither did he indicate that he clarified his prohibition to include only those times other than breaks and lunch. Therefore, the situation herein falls within the scope of the Board's decision in *T.R.W. Bearings*, 257 NLRB 442 (1981), and is unlawful.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. By promulgating and maintaining a no-solicitation rule which prohibits its employees from soliciting union cards during working time, without further clarification, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. Respondent has not otherwise engaged in violations of unfair labor practices alleged in the complaint.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

<sup>7</sup> The single most alarming factor was Burnette's obvious exaggeration regarding her evaluation of all the buffer employees' work. As mentioned above Burnette moved from an original position that all those employees performed well, to an admission that specifically named buffers performed poorly.

<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Arlington House Aluminum Furniture Division of Plantation Patterns, Inc., Birmingham, Alabama, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act by promulgating and maintaining a no-solicitation rule which prohibits solicitation of union authorization cards by its employees during working time.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the policies of the Act.

(a) Post at its Birmingham, Alabama place of business copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

<sup>9</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."